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and separation and closing of said second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members.

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8. (Amended) The holder of claim 7 wherein said living hinge member extends along and in the direction of said one pair of straight across split edges hingedly connected by said living hinge member extending along the axis of the first pair of split edges.

### REMARKS

#### Status of the Claims

Claims 1-10 are currently pending in this application. The independent claims are claims 1, 2, 6 and 7. Claims 1, 6 and 7 were objected to as containing informalities. Claims 1-10 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1-3, 5, 7, 8 and 10 were rejected under 35 U.S.C. § 102(b) as being anticipated by Prizzi U.S. Patent No. 5,611,123 ("Prizzi"). Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Prizzi. Claim 9 was also rejected under 35 U.S.C. § 103(a) as being unpatentable over Prizzi as applied to claims 7 and 8, and further in view of U.S. Patent No. 5,782,090 to Locke ("Locke") or U.S. Patent No. 5,362,018 to Darr et al. ("Darr et al."). The Examiner has indicated that claim 6 would be allowed if rewritten or amended to overcome the rejection under 35 U.S.C. § 112, second paragraph. By this amendment, Applicant has cancelled claim 10 and has amended claims 1, 2, 6, 7 and 8. Therefore, Applicant respectfully submits that as amended the within application is in condition for allowance.

#### Rejections under 35 U.S.C. § 112

Claims 1-10 were rejected under 35 U.S.C. § 112, second paragraph, in particular claims 1, 2, 6, 7, 8 and 10. The Examiner has indicated that claim 6 would be allowed if rewritten or

amended to overcome the rejection under 35 U.S.C. § 112, second paragraph. Applicant has amended claims 1, 2, 6, 7 and 8 by removing the objectionable language. Accordingly, the Examiner is requested to withdraw the outstanding rejection as applied to claims 1, 2, 6, 7 and 8.

**Rejections under 35 U.S.C. § 102:**

Claims 1-3, 5, 7, 8 and 10 are rejected under 35 U.S.C. § 102(b) as being anticipated by Prizzi. Applicant has amended independent claims 1, 2 and 7 to recite “being hingedly connected by a living hinge *formed by a groove . . .*” which Prizzi does not teach or suggest (emphasis added). (See Office Action, pp. 5, ¶2.) Support for this amendment may be found in the specification. See for example, specification, pp. 3, ¶2. Claims 1, 2 and 7 have also been amended to recite “two clamping members joined together at across *a first pair of split edges . . .*” (emphasis added). Support for the amendment may be found in the specification. See for example, specification, pp. 3-4, ¶3.

To anticipate a claim, the reference must teach each and every element as set forth in the claim. M.P.E.P. § 2131; See Verdegaal Bros. V. Union Oil Co., 814 F.2d 628, 631, 2 U.S.P.Q.2d (BNA) 1051, 1053 (Fed. Cir. 1987). In this instance, Prizzi does not teach and or suggest each and every limitation of the independent claims as amended and thus cannot be considered to anticipate the present invention.

The invention recited in independent claims 1, 2 and 7 are characterized by the living hinge formed by a groove between the mirror image clamp halves enabling the holder to be molded in any length. In addition, as amended the invention discloses “two opposed clamping members joined together at across a first pair of split edges and separated by a second pair of split edges. (See for example the first embodiment of the application). This activates the opening and closing of the opposed clamping member and the second pair of split edges which

engage and are secured to the support by applying pressure to the handle members facilitating ease of use.

In contrast, Prizzi teaches a towel holder having a circular plastic tube about 15 to 18 inches in length. See Prizzi, col. 3, ll. 31-33. The length of the plastic tube disclosed by Prizzi is restricted by its overall construction. Prizzi is silent on the combination of a first pair of split edges and separated by a second pair of split edges. Prizzi does not teach or suggest material elements of the combination as claimed in independent claims 1, 2 and 7 of the present invention.

Therefore, Applicant respectfully submits that claims 1, 2 and 7 are thus patentable over the cited reference for at least this reason. Accordingly, dependent claims 3-5, and 8-9 are also in condition for allowance.

#### **Rejections under 35 U.S.C. § 103**

Both claims 4 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Prizzi. Further, claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Prizzi as applied to claims 7 and 8, and further in view of Locke or Darr et al.

As to claim 4, the Examiner has stated that it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the material. To establish a prima facie case of obviousness, there must be some suggestion or motivation to modify the reference or to combine the teachings; there must be a reasonable expectation of success; and the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142 (emphasis added).

Here, the third prong is not satisfied and a prima facie case of obviousness cannot be established or sustained. Claim 4 is a dependent claim depending from independent claim 2. As a dependent claim, claim 4 includes all the limitations of claim 2 which are incorporated by

reference into claim 4. See M.P.E.P. § 608.01(n). By this amendment, independent claim 2 has been amended in a manner as previously indicated to include the limitations of a “living hinge formed by a groove” and “a first pair of split edges” which is separated from a second pair of split edges. Clearly Prizzi does not disclose, teach or suggest a first and a second pair of split edges nor a living hinge formed by a groove. Therefore, Prizzi (the sole reference cited with regards to claim 4) cannot be held to teach or suggest all the claim limitations of claim 2 from which claim 4 depends. Therefore, Prizzi cannot render the present invention obvious as Prizzi does not teach or suggest all of the claim limitations as claimed in claim 4.

Similarly, claim 9 depends from claim 8, which depends from independent claim 7. Claim 9 therefore includes all the limitations of independent claim 7 which are incorporated by reference. Independent Claim 7 has been similarly amended to recite “a first pair of split edges” in combination with the previously recited limitation of the second pair of split edges. Neither Prizzi, Lock, nor Darr et al. teach or suggest the combination as claimed in the amended independent claim 7.

Locke discloses a hose clip with a main body which is circumferentially open-sided. Darr et al. discloses a reversible clip for wiring harness with a T-shaped molded clip with an elongated base. Neither Prizzi, Locke nor Darr et al. suggest the motivation to combine the references to create the invention as claimed in independent claim 7. Further, none of the references cited in combination teach or suggest the limitations of a first and second pair of split edges. (See amended claim 7). Thus, in light of the above stated argument the rejection of dependent claim 9 should be withdrawn.

### **CONCLUSION**

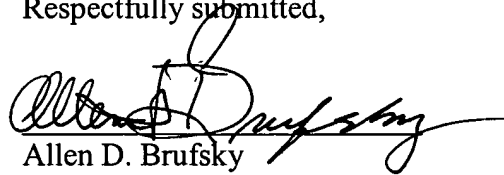
For the reasons set forth above, the cited references do not disclose, teach, or suggest the characteristics of the inventions recited in the above claims. The claimed inventions are thus

believed distinguishable from the cited references and are not anticipated or rendered obvious thereby. Therefore, Applicant respectfully submits that claims 1-9 are allowable over the prior art of record, and it is respectfully requested that the case be passed to issuance as soon as possible.

**AUTHORIZATION**

While Applicant believes that no additional fees are required for the filing of the this Amendment, the Commissioner is hereby authorized to charge any such fees, or credit any overpayment to Deposit Account No. 501851.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allen D. Brufsky", written over a horizontal line.

Allen D. Brufsky  
Attorney for Applicant  
Reg. No. 21,056

Date: February 12, 2003

**CUSTOMER NO. 32575**

**APPENDIX A****In the claims:**

1. (Amended) In combination a releasable tube holder and a longitudinal support comprising,

said tubular holder including a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members joined together at across [one] a first pair of split edges and separated by a second pair split edges, each clamping member provided with at least one separated handle member positioned on one of the clamping member halves and opposite another handle member on the other clamping member half, said clamping member halves being hingedly connected by a living hinge formed by a groove between said first pair of split edges to activate opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members.

2. (Amended) In combination a releasable tube holder and a longitudinal support comprising,

said longitudinal support supporting a towel hanging therefrom,

said tubular holder including a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members joined together at across [one] a first pair of split edges and separated by a second pair of split edges, each clamping member provided with at least one separated handle member positioned on one of the clamping member halves and opposite another handle member on the other clamping member half, said clamping member halves being hingedly connected by a living hinge formed by a groove between said first pair of split edges to activate opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are

secured to the support by applying and removing pressure on the oppositely positioned handle members.

6. (Twice Amended) In combination a releasable tube holder and a longitudinal support comprising,

said tubular holder including a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members joined together at across [one] a first pair of split edges and separated by a second pair of split edges, each clamping member[s] provided with at least one separated handle member positioned on one of the clamping member halves and opposite another handle member on the other clamping member half, said clamping member halves being hingedly interconnected with a hinge pin connected by a hinge on each clamping member half said first pair of split edges[,] with a torsion spring positioned between said first pair of split edges of said clamping member halves to activate opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members.

7. (Twice Amended) In combination, a releasable tube holder and a longitudinal support comprising,

said tube holder including a circular plastic tube split lengthwise longitudinally into mirror image straight halves forming [two] two opposed clamping members joined together at [one] a first pair of straight across split edges and separated by [another] a second pair of split edges, each clamping member provided with at least one separated handle member positioned on one of the clamping members and opposite another handle member on the other clamping member, said clamping member [halves] being hingedly connected by a living hinge member

formed by a groove along [one] said first pair of [said] split edges to activate opening and closing of the opposed clamping members and separation and closing of [the other] said second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members.

8. The holder of claim 7 wherein said living hinge member extends along and in the direction of said one pair of straight across split edges hingedly connected by [a] said living hinge member extending along the axis of the first pair of split edges.